

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
MICHAEL ANDRICKSON,

Petitioner,

-against-

W. BROWN, Superintendent,

Respondent.
----- X

FILED
TIME A.M. _____
05 CV 4506 (ARR)

NOT FOR
PUBLICATION

OPINION AND ORDER

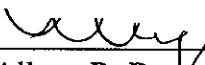
ROSS, United States District Judge:

The pro se petitioner Michael Andrickson ("Andrickson" or "petitioner") filed the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on September 20, 2005. Andrickson's petition raises three claims: (1) that he was denied his right to due process because his guilt was not proven beyond a reasonable doubt; (2) that he was denied the effective assistance of trial counsel for counsel's purported failure to properly prepare for trial by investigating necessary witnesses and calling a medical expert to testify about the physical evidence presented by the prosecution; and (3) that he was denied the effective assistance of appellate counsel for counsel's purported failure to raise an ineffective assistance claim on direct appeal. While petitioner raised the first claim on appeal, he has never presented an ineffective assistance claim in the state courts. By motion dated September 15, 2005¹ petitioner has requested that the court to stay the petition so that he may exhaust those claims.

¹ The motion was filed with the original petition on September 20, 2005. It was subsequently re-filed on November 7, 2005.

Pursuant to Rhines v. Weber, 125 S.Ct. 1528 (2005), the court hereby stays the instant petition for a writ of habeas corpus so that petitioner may seek to exhaust his ineffective assistance claims in the state court by way of a Section 440 motion and a Writ of Error Coram Nobis.² The stay is conditioned on the fact that petitioner pursue his state court remedies within thirty (30) days of the date of this order and that he return to federal court to proceed with his petition for a writ of habeas corpus within thirty (30) days of exhausting his ineffective assistance claim. Zarvela v. Artuz, 254 F.3d 374, 381 (2d Cir. 2001). Petitioner is advised that he may be barred from proceeding in this court if, having been denied relief in state court, he delays in seeking to reopen these proceedings.

SO ORDERED.



Allyne R. Ross
United States District Judge

Dated: December 2, 2005
Brooklyn, New York

² By letter dated December 1, 2005, respondent seeks an extension of time to file a response to the court's order to show cause dated October 5, 2005. The court's grant of petitioner's motion to stay his petition renders respondent's extension request moot.

SERVICE LIST:

Pro Se Petitioner

Michael Andrickson
02A0178
Eastern NY Correctional Facility
P.O. Box 338
Napanoch, NY 12458-0338

Attorney for Respondent

Ellen C. Abbot
Assistant District Attorney
District Attorney, Queens County
120-55 Queens Boulevard
Kew Gardens, New York 11415-1568